

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FN 2010-090627

08/07/2012

HON. TERESA SANDERS

CLERK OF THE COURT

K. Tiero

Deputy

IN RE THE MARRIAGE OF
ARLENE NATALE

WILLIAM D BISHOP

AND

PAUL NATALE

PAUL NATALE
11126 E SORREL LN
SCOTTSDALE AZ 85259

DOCKET-FAMILY COURT-SE
FAMILY COURT SERVICES-CCC

UNDER ADVISEMENT RULING

The Court took Petitioner/Wife's *Petition for Contempt and for Enforcement of Court Orders* filed January 4, 2012, under advisement after a trial was conducted on July 9, 2012. The Court has considered the testimony and other evidence presented, and finds and orders as follows:

DIVISION OF NON-RETIREMENT ACCOUNTS

Husband owes to Wife the total sum of \$27,475.19 in connection with the division of the parties' non-retirement financial accounts. It is therefore ordered entering judgment for Wife, and against Husband in the total amount of \$27,475.19. This judgment shall bear interest at the legal rate, from the date of this order, until paid in full.

INSURANCE PROCEEDS

The former marital residence was damaged by a fire, and the parties' insurance carrier, USAA, has provided funds to repair the residence. In its *Decree of Dissolution of Marriage* filed September 28, 2011, the Court specifically ordered that:

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“Each party is entitled to one-half of any remaining insurance proceeds after the renovations are completed. Husband must, no later than June 10, 2011, provide an accounting to Wife regarding all insurance proceeds received, as well as all amounts expended for renovations, along with copies of cancelled checks for those expenditures.”

Husband did not provide any accounting to Wife until May 15, 2012, almost one year after he was ordered to do so. As of the date of the evidentiary hearing conducted on the pending petition, Husband had actually provided documentation that verified a fraction of the insurance proceeds that he received. One of Husband's explanations for the lack of documentation regarding his expenditures is that he paid several contractors in cash and obtained no receipts for the work done.

Based upon the evidence presented, the Court adopts the findings of Mr. Antony Chapman (Exhibit #92) regarding how the remaining insurance proceeds should be allocated between the parties, prior to the documentation provided by Husband post-trial. After the July 9, 2012, evidentiary hearing was conducted, Husband provided further documentation regarding the expenditure of insurance proceeds. Wife has responded to that documentation and has indicated that she does not object to Husband receiving credit for an additional \$30,422 in insurance proceeds expenditures. Wife's position regarding the new refrigerator, the new air conditioning system, the new driveway, ceiling fans, garbage disposal, chandelier, and floodlights, is also reasonable. It is also important to note that none of these items were considered in determining the current value of the residence. If Husband ultimately retains possession of the residence, Wife will not benefit from these expenditures in any way.

Wife is currently in possession of a check in the total amount of \$147,349.14 issued from the parties' insurance carrier, USAA. Based upon all of the evidence presented, the Court finds that Wife is entitled to \$120,168.32 of the proceeds from that check, and Husband is entitled to \$27,180.82 of the proceeds. The Court is also specifically rejecting Husband's claim that he is somehow entitled to a 20% "contractor's fee".

NON-QUALIFIED ACCOUNTS

Wife is entitled to \$26,000 from Husband's Southwest Airlines 401(a)(17) Contribution Plan and Southwest Airlines Excess Benefits Plan. Such funds are not payable to Husband until his retirement, and would likely be subject to a 33% federal income tax liability. Wife wants the funds paid now, Husband wants the funds to be paid only upon his retirement and their actual payment to him. Wife is understandably concerned regarding Husband's willingness to pay her allocated share of these retirement proceeds.

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Based upon the matters presented, it is ordered that Husband shall pay to Wife the total sum of \$17,420 (\$26,000 X 67%) within 90 days of the date of this minute entry to satisfy his obligation to Wife regarding these accounts. If, for some reason, Husband is not paid these funds upon his retirement, Wife shall be required to reimburse Husband for this amount.

QUALIFIED RETIREMENT ACCOUNTS

The Court has been informed that Husband has no objection to the “QDRO” as prepared by Mr. Underwood. If he has not yet done so, Husband shall sign the “QDRO” no later than August 31, 2012.

MARITAL RESIDENCE

The current fair market value of the former marital residence is \$760,000. Husband is entitled to credit for any reduction in principal to the parties’ current loan based upon payments that he has made as of the date of service. Husband may purchase Wife’s interest in this property based upon the listed value, his credit for payments made that resulted in a reduction of principal, and costs associated with the sale of the property. In conjunction with Husband’s purchase of Wife’s interest in this property, he must obtain a new loan, which eliminates Wife’s name from any mortgage on the property. Wife must cooperate with signing any documents necessary to assist Husband’s refinance of the property and purchase from Wife. Husband’s purchase and re-finance of the property must take place no later than October 31, 2012. If Husband fails to meet the above-referenced conditions, Wife may purchase the property from Husband pursuant to the same conditions within sixty days of October 31, 2012. If neither party succeeds in purchasing the property from the other, a new real estate commissioner shall be appointed and the property shall be sold. If a new real estate commissioner is required to be appointed, the property shall be vacated.

PERSONAL PROPERTY

There is still numerous personal property items that remain to be distributed between the parties, those items appear to be in Husband’s exclusive control at the present time. The Court issued orders, pursuant to the *Decree of Dissolution of Marriage*, that the parties were to “divide such property by a separate alternate selection process.” These items shall be distributed, as set forth in the *Decree of Dissolution of Marriage*, no later than October 31, 2012. If this is not accomplished by the required date, a special master shall be appointed, at the sole expense of Husband, to inventory and divide the parties’ personal property.

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BACK SPOUSAL MAINTENANCE

Wife is entitled to an award for any interest accumulated between December 31, 2011, and the date of payment, at the legal rate.

ATTORNEY'S FEES JUDGMENT/PRE-DECREE

Based upon the evidence presented, it appears as though this issue has been resolved.

ACCESS TO THE RESIDENCE

It is the Court's understanding that Husband currently has an order of protection that prohibits Wife from accessing the former marital residence. Husband shall be granted exclusive use and possession of the former marital residence, provided that he bears sole responsibility for any financial liabilities associated with it, until October 31, 2012. If Husband has perfected his purchase of the residence by that date, he shall thereafter have exclusive use and possession of it. If he fails to do so, he shall no longer have exclusive use and possession of the former marital residence.

TAX REFUNDS

Husband shall pay to Wife the total amount of \$3920.50, as and for her share of the parties' 2010 federal and state tax refunds, no later than October 31, 2012.

BECKER LANE AND MOUNTAIN VIEW RENTAL PROPERTIES

It is the Court's understanding that Husband has recently listed the Mountain View property for sale. Once sold, the proceeds of this sale shall be divided as set forth in the *Decree of Dissolution of Marriage*. The Becker Lane property, titled in Wife's name, shall also be listed for sale immediately, if not already done so, and the proceeds divided as set forth in the *Decree of Dissolution of Marriage*.

ATTORNEY'S FEES/POST DECREE

This issue will be ruled upon by the Court pursuant to a separate minute entry.

ATTORNEY'S FEES/ENFORCEMENT PROCEEDINGS

This issue will be ruled upon by the Court pursuant to a separate minute entry.

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IT IS ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/s/ HONORABLE TERESA A. SANDERS

HONORABLE TERESA A. SANDERS
JUDGE OF THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.